

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

DAWUD C.S. GABRIEL,)
)
)
Plaintiff,)
) No.: 1:22-CV-312-KAC-SKL
v.)
)
COVENANT LOGISTICS GROUP, INC.,)
)
Defendant.)

ORDER DISMISSING CASE

Before the Court is (1) United States Magistrate Judge Susan K. Lee’s “Report and Recommendation” (“Report”), entered on January 18, 2023, [Doc. 12], and (2) two later-filed duplicate “Plaintiff’s L.R.12(a) Second (2nd) Extension Motion to File Rule 60(b)(1) Motion & §§ 144 & 455(a) Affidavits,” [Docs. 13, 14]. Because Plaintiff Dawud C.S. Gabriel has failed to timely comply with this Court’s December 20, 2022 Order by paying the required filing fee or submitting a properly completed *in forma pauperis* (“IFP”) application, the Court dismisses this action under Federal Rule of Civil Procedure 41(b).

On December 15, 2022, Plaintiff filed an “Emergency Motion for Leave to Partially Proceed in Forma Pauperis” [Doc. 2]. On December 20, 2022, the Court ordered Plaintiff “to, within 21 days . . . either (1) pay the filing fee in full or (2) complete and submit his signed IFP application” [Doc. 8]. The Court warned Plaintiff “that a failure to fully comply with this Order will result in a dismissal of his claim” [*Id.*]. On January 6, 2023, Plaintiff filed a “Notice of Obstruction” [Doc. 9]. And on January 12, 2023, Plaintiff filed duplicate “Plaintiff’s L.R.12.1(a) Extension Motion/Notice to File Rule 60(b)(1) Motion & §§ 144 & 455(a) Affidavits” [Docs. 10, 11]. But Plaintiff failed to timely pay the filing fee or submit a properly

completed IFP application within the twenty-one (21) day period that this Court laid out in its December 20 Order [*See Doc. 12 at 2*].

In her January 18, 2023 Report, Judge Lee recommended that the Court deny “Plaintiff’s L.R.12.1(a) Extension Motion/Notice to File Rule 60(b)(1) Motion & §§ 144 & 455(a) Affidavits” [Doc. 10] and deny the duplicate filing [Doc. 11] as moot [*See Doc. 12 at 3-4*]. Further, Judge Lee recommends that the Court dismiss Plaintiff’s Complaint [Doc. 1] pursuant to Rule 41(b) because Plaintiff failed to comply with the Court’s December 20 Order. Finally, Judge Lee recommends that the Court deny as moot both “Plaintiff’s Emergency Motion for Leave to Partially Proceed in Forma Pauperis” [Doc. 2] and “Plaintiff’s Brief in Support of Rule 4(m) Motion to Extend the Time to Perfect Service” [Doc. 3]. Plaintiff has not objected to the Report, and the time to do so has passed. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

Thereafter, Plaintiff filed duplicate copies of a “Plaintiff’s L.R.12(a) Second (2nd) Extension Motion to File Rule 60(b)(1) Motion & §§ 144 & 455(a) Affidavits” [Docs. 13, 14]. But those filings suffer from the same defect as Plaintiff’s duplicate initial “Plaintiff’s L.R.12.1(a) Extension Motion/Notice to File Rule 60(b)(1) Motion & §§ 144 & 455(a) Affidavits” [Docs. 10, 11]—they fail to show good cause for any extension of the Court’s deadline for submitting a proper IFP application or paying the filling fee in full. *See* Fed. R. Civ. P. 6(b). And Plaintiff has still willfully failed to comply with this Court’s December 20 Order by submitting a proper IFP application or paying the filling fee in full, even after being warned that a failure would result in dismissal of his case. *See Wu v. T.W. Wong, Inc.*, 420 F.3d 641, 643 (6th Cir. 2005).

After reviewing the record, the Court **ACCEPTS** and **ADOPTS** Judge Lee’s Report [Doc. 12] under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2). And the Court:

- (1) **DENIES** “Plaintiff’s L.R.12.1(a) Extension Motion/Notice to File Rule 60(b)(1) Motion & §§ 144 & 455(a) Affidavits” [Doc. 10] and **DENIES AS MOOT** the duplicate filing of the same name [Doc. 11];
- (2) **DENIES** “Plaintiff’s L.R.12(a) Second (2nd) Extension Motion to File Rule 60(b)(1) Motion & §§ 144 & 455(a) Affidavits” [Doc. 13] and **DENIES AS MOOT** the duplicate filing of the same name [Doc 14];
- (3) **DISMISSES** this action for failure to comply with the Court’s December 20, 2022 Order; and
- (4) **DENIES AS MOOT** “Plaintiff’s Emergency Motion for Leave to Partially Proceed in Forma Pauperis” [Doc. 2] and “Plaintiff’s Brief in Support of Rule 4(m) Motion to Extend the Time to Perfect Service” [Doc. 3].

An appropriate judgment shall enter.

IT IS SO ORDERED.



KATHERINE A. CRYTZER
United States District Judge